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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

JENNIFER SMITH MITCHELL,

Plaintiff and Appellant,

v.

GAIL A SMITH, as Trustee, etc., et al.,

Defendants and Respondents.

C078089

(Super. Ct.

No. 39201100267528PRTRSTK)

Delbert W. Smith (the decedent) established a trust, designating five of his nieces, Gail A. Smith, Jennifer Smith Mitchell, Carolyn Lowrey, Joan L. Maury, and Patricia Calder as beneficiaries. Following the decedent's death, Mitchell objected to various actions taken by Smith as trustee. A lawsuit ensued, judgment was entered, and Mitchell appealed. The parties entered into a settlement agreement pursuant to which Mitchell agreed to release all claims against Smith, as well as her successors in interest, which in any way arose out of the matters that were the subject of the lawsuit. Subsequently, Mitchell opposed petitions to settle and accountings filed by Smith and Lowrey as

successor trustee. Mitchell also asserted that Smith and Lowrey each breached the duty of loyalty and the duty to exercise reasonable care.

Mitchell now appeals from two orders. In the first order, filed November 17, 2014, the trial court, *inter alia*, approved Smith's second amended petition for settlement of first and final account and report, granted Lowrey's second petition for instructions directing her to distribute certain real property in accordance with the ownership interests described in that petition, approved Lowrey's petition for settlement of second and final account and report for all actions and expenditures occurring prior to May 2, 2014, and denied Mitchell's amended petition for instructions. In the second order, filed May 19, 2015, the trial court, among other things, approved Lowrey's petition for settlement of second and final account and report for all actions and expenditures occurring after May 2, 2014.

On appeal, Mitchell raises a variety of claims concerning both orders pertaining to the accuracy and truthfulness of Smith's and Lowrey's accountings as well as their alleged breaches of the duty of loyalty and the duty to exercise reasonable care. We conclude that Mitchell's contentions are barred by the settlement agreement and her release of all relevant claims. In any event, we further conclude that the trial court's determinations on the merits are supported by substantial evidence, and the trial court did not abuse its discretion in issuing the orders.

We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The decedent established a trust entitled the Delbert W. Smith Living Trust. He named himself as the initial trustee as well as settlor. He appointed Smith as first successor trustee and Lowrey as second successor trustee. The trust named Smith, Lowrey, Maury, and Mitchell as beneficiaries, each with a 25% interest in the trust. By amendment executed on September 25, 2010, the decedent added another niece, Patricia

Calder, as a fifth coequal beneficiary, resulting in each beneficiary's share of the trust being 20 percent. At the time of decedent's death, the trust property included certain real property in Palm Desert¹ (the real property) and cash assets.

By complaint filed on March 14, 2011, Mitchell commenced an action against Smith as trustee. Mitchell asserted 11 causes of action related to Smith's handling of the trust, including causes of action sounding in fraud, breach of the duty of loyalty, embezzlement, undue influence, and unjust enrichment. Smith answered separately as an individual and as trustee, denying the material allegations of the complaint and asserting a variety of affirmative defenses.

Smith filed a petition for instructions pursuant to Probate Code section 17200 on September 14, 2012. Calder, Lowrey, and Maury filed waivers of notice and notices of no objection with regard to Smith's petition. In their notices, they indicated, among other things, that they had no objection to the designation of Smith as sole beneficiary of decedent's IRA.

On June 13, 2013, following a trial, the trial court issued a tentative decision, appointing Lowrey as successor trustee, directing that the trustee sell the real property and deposit the net proceeds in the trust, instructing that the trustee make an accounting, and ordering that the IRA and the trust assets be distributed equally among the beneficiaries. A statement of decision, requested by Mitchell and filed July 26, 2013, was largely consistent with the tentative order. The statement of decision did specify that the accounting was to be performed by Smith, and reviewed and modified, if necessary, by Lowrey. The court expressly rejected Mitchell's objections to the tentative decision that were not otherwise addressed in the tentative decision itself. The judgment after trial was filed on November 20, 2013.

¹ It is undisputed that nonparty Elizabeth Handley owned a two percent share in the real property, which ownership interest is not at issue here.

After Mitchell filed a notice of appeal on December 19, 2013,² this court ordered the case to mediation on April 1, 2014. On May 2, 2014, Mitchell and Smith entered into a settlement agreement. They agreed that, for certain consideration as set forth in an attachment, “the entire litigation shall be deemed settled with respect to all parties to said action.” Additionally, Mitchell agreed to dismiss, with prejudice, her appeal from the judgment, and she further agreed to comply with the terms of the judgment. The attachment provided that: Mitchell would be paid \$3,500 from the trust account; the balance of the trust account would be distributed equally among the beneficiaries, except Smith’s share would be reduced by \$1,200 and distributed to Mitchell; Mitchell was to receive a 76 percent share of the net proceeds of the sale of the real property, and the remaining 24 percent would be split equally among Maury, Calder, and Lowrey, leaving Smith with no share in the real property; Mitchell would file no objections to the accounting filed by Smith as amended pursuant to the agreement; the IRA would be distributed pursuant to the terms in the judgment; and the parties agreed that there were no outstanding loans to any beneficiary or third party as of the date of decedent’s death. Mitchell subsequently filed in the trial court an abandonment of her appeal from the judgment.

Smith filed an amended petition for settlement of first and final account and report on May 15, 2014, and a second amended petition on July 8, 2014. Also on July 8, 2014, Lowrey, as successor trustee, filed a second petition for instructions. Mitchell filed objections dated August 11, 2014, to Smith’s second amended petition.

On August 13, 2014, Lowrey, as successor trustee, filed a petition for settlement of second and final account and report. Mitchell then filed a combined petition for

² That notice of appeal does not appear in Mitchell’s appendix on appeal. We take judicial notice of this notice of appeal, our order directing that the matter proceed to mediation, and Mitchell’s subsequent abandonment of her appeal.

instructions, second objections to the first accounting, objections to the second accounting, and second objections to the petition for instructions. Mitchell filed an amended petition for instructions on October 31, 2014, seeking, among other things, an order surcharging the trustees for failure to preserve trust property and failure to make trust property productive by collecting rent.

In the first order from which Mitchell appeals, filed November 17, 2014, after a hearing on November 7, 2014, the trial court approved in its entirety the second amended petition for settlement of first and final account and report filed by Smith. The court stated that it would entertain a motion for attorney's fees by Smith's attorney for his work in responding to Mitchell's objections. The court also granted the second petition for instructions filed by Lowrey, directing Lowrey to distribute the real property to its owners based on the ownership interests set forth in that petition, which were consistent with the settlement agreement. Additionally, the court approved the petition for settlement of second and final account and report filed by Lowrey for all expenditures prior to May 2, 2014, the date the parties entered into the settlement agreement. The court directed that, if Mitchell wished to object to expenditures occurring after that date, objections were to be filed and served no later than December 3, 2014. Finally, the court denied in its entirety Mitchell's amended petition for instructions.

Mitchell filed objections to Lowrey's accounting and objected to Smith's application for legal fees. With regard to Lowrey's accounting, Mitchell asserted that Lowrey, in her capacity as successor trustee, was not a party to the settlement agreement. Accordingly, Mitchell asserted that Lowrey was required to comply with the court's pre-settlement order and judgment, and was required to review Smith's accounting. As for the substance of her objections to the accounting, Mitchell essentially reiterated the claims set forth in her August 12, 2014, objections.

In the second order from which Mitchell appeals, filed on March 19, 2015, after a hearing, the trial court denied Smith's petition for attorney's fees, approved Lowrey's

petition for settlement of second and final account and report for all actions and expenditures occurring after May 2, 2014, and denied Lowrey's application for attorney's fees.³

DISCUSSION

I. Standard of Review

"On appeal, a judgment of the trial court is presumed to be correct. [Citation.] Accordingly, if a judgment is correct on any theory, the appellate court will affirm it regardless of the trial court's reasoning. [Citations.] All intendments and presumptions are made to support the judgment on matters as to which the record is silent. [Citation.] We presume the trial court followed applicable law. [Citation.] When no statement of decision is requested and issued, we imply all findings necessary to support the judgment." (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956 (*Cahill*).)

Probate Code section 17206 provides: "The court in its discretion may make any orders and take any other action necessary or proper to dispose of the matters presented by [a] petition . . ." filed under that chapter. "When a matter is left to the discretion of the trial court, on appeal we apply the abuse of discretion standard of review. [Citation.] Under that standard, there is no abuse of discretion requiring reversal if there exists a reasonable or fairly debatable justification under the law for the trial court's decision or, alternatively stated, if that decision falls within the permissible range of options set by the applicable legal criteria. [Citations.] Judicial discretion 'implies absence of arbitrary determination, capricious disposition or whimsical thinking. It imports the exercise of

³ Mitchell had also objected to any claims that she was required to pay the carrying expenses associated with the real property in proportion to her 76 percent ownership interest. In another order filed March 19, 2015, the trial court ordered that the trust itself was to pay the expenses associated with the real property.

discriminating judgment within the bounds of reason.’ [Citation.] ‘The abuse of discretion standard is not a unified standard; the deference it calls for varies according to the aspect of a trial court’s ruling under review. The trial court’s findings of fact are reviewed for substantial evidence, its conclusions of law are reviewed de novo, and its application of the law to the facts is reversible only if arbitrary and capricious.’ [Citation.] We reverse the judgment only if in the circumstances of the case, viewed most favorably in support of the decision, the decision exceeds ‘the bounds of reason’ [citation], and therefore a judge could not reasonably have reached that decision under applicable law [citations]. It is the appellant’s burden on appeal to show the trial court abused its discretion.” (*Cahill, supra*, 194 Cal.App.4th at p. 957.)

Regarding our review of those aspects of a judgment, which are based on the trial court’s resolution of disputed factual issues pertaining to a trustee’s actions, we employ the substantial evidence standard of review. (*Penny v. Wilson* (2004) 123 Cal.App.4th 596, 603.) “ ‘Substantial evidence’ is not synonymous with ‘any’ evidence; rather, it means the evidence must be of ponderable legal significance, reasonable, credible, and of solid value. [Citation.] An appellate court presumes in favor of the judgment or order all reasonable inferences. [Citation.] If there is substantial evidence to support a finding, an appellate court must uphold that finding even if it would have made a different finding had it presided over the trial. [Citations.] An appellate court does not reweigh the evidence or evaluate the credibility of witnesses, but rather defers to the trier of fact.” (*Cahill, supra*, 194 Cal.App.4th at p. 958.)

II. Effect of Settlement Agreement and Release

A. Mitchell’s Contentions

Mitchell raises a number of contentions challenging the accuracy and truthfulness of Smith’s and Lowrey’s accountings, and the trial court’s approval thereof. She also asserts that the trial court erred in directing the conveyance of the real property to the beneficiaries rather than continuing to have the trust administer the real property until it is

prepared for market and ultimately sold. Additionally, Mitchell claims that the trial court erred in failing to find that Smith and Lowrey each breached the duty of loyalty and the duty to use reasonable care. Finally, Mitchell asserts that Smith and Lowrey, in their capacities as trustees, are jointly and severally liable, and that she is entitled to attorney's fees and costs.

We conclude that, in executing the settlement agreement, Mitchell released her claims asserted against Smith and Lowrey. Mitchell also expressly agreed not to file any objection to Smith's accounting as amended pursuant to the settlement agreement. Based upon the settlement agreement, Mitchell released all relevant claims, and therefore the trial court properly approved of Smith's and Lowrey's petitions for settlement and accountings, properly denied Mitchell's objections, and properly granted Lowrey's petition for instructions for the distribution of the real property. We conclude that the trial court's determinations were supported by substantial evidence, and its orders did not constitute an abuse of discretion.

B. Additional Background

On May 2, 2014, Smith and Mitchell entered into the settlement agreement. Additionally, Maury executed the agreement on her own behalf and, as agent or pursuant to power of attorney, on behalf of Lowrey and Calder.⁴ The parties agreed that, for certain consideration as set forth in an attachment, "the entire litigation shall be deemed settled with respect to all parties to said action." Additionally, Mitchell agreed to dismiss, with prejudice, her appeal from the November 20, 2013, judgment, and to comply with the terms of that judgment.

In the third term of the settlement agreement, Mitchell agreed "to release and discharge [Smith] and her agents, servants, employees, heirs, assigns, representatives,

⁴ While no power of attorney appears in the appendix, no party asserts on appeal that Maury improperly or ineffectively acted on behalf of Lowrey and Calder.

predecessors, successors in interest, and attorneys from any and all actions, claims, liens, and demands whatsoever, now existing or hereafter accruing, and/or damages to [Mitchell] and any and all other damages and consequences which, in any way, relate to, connect with, or arise out of the matters as set forth in [Mitchell]’s action filed in San Joaquin County Superior Court case number 39-2011-00267528-PR-TR-STK and in the appeal filed by [Mitchell] bearing case number C075479, and all related incidents, transactions, and events arising therefrom.” Further, Mitchell agreed “that this agreement and release shall apply to all unknown and unanticipated claims which arise from any matters set forth in the San Joaquin County action and the appeal (as referred to under Recitals), and any and all related incidents, transactions, and events, also including all rights or derivative actions, as well as any claims known or disclosed” Mitchell expressly waived the provisions of Civil Code section 1542.⁵ That section provides: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.” (Civ. Code, § 1542.)⁶ Smith executed a similar provision in favor of Mitchell. Mitchell also agreed that she would file no objections to the accounting filed by Smith as amended pursuant to the agreement.

⁵ The agreement erroneously refers to section 1542 of the Code of Civil Procedure rather than the Civil Code. However, the statutory language is quoted in full in the settlement agreement.

⁶ A party’s waiver of the benefits of Civil Code section 1542 is enforceable provided the waiver is made in a knowing and voluntary manner (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1170-1171), and that the releasor is neither unsophisticated nor lacking the advice of independent counsel. (*Claxton v. Waters* (2004) 34 Cal.4th 367, 382.) Mitchell does not claim that she did not have knowledge or understanding of the significance of the settlement agreement and the waiver of the benefits of Civil Code section 1542, that she did not execute the settlement agreement voluntarily, or that she was not sufficiently sophisticated to execute the waiver. Her attorney also signed the agreement.

C. Law of Contracts and Contract Interpretation

“A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts.” (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810-811 (*Weddington*).)

“An essential element of any contract is ‘consent.’ [Citations.] The ‘consent’ must be ‘mutual.’ [Citations.] ‘Consent is not mutual, unless the parties all agree upon the same thing in the same sense.’ ” (*Weddington, supra*, 60 Cal.App.4th at p. 811.)

“ ‘The existence of mutual consent is determined by objective rather than subjective criteria, the test being what the outward manifestations of consent would lead a reasonable person to believe.’ [Citation.] Outward manifestations thus govern the finding of mutual consent required by Civil Code sections 1550, 1565 and 1580 for contract formation. [Citations.] The parties’ outward manifestations must show that the parties all agreed ‘upon the same thing in the same sense.’ [Citation.] If there is no evidence establishing a manifestation of assent to the ‘same thing’ by both parties, then there is no mutual consent to contract and no contract formation.” (*Weddington*, at p. 811.)

“In order for acceptance of a proposal to result in the formation of a contract, the proposal ‘must be sufficiently definite, or must call for such definite terms in the acceptance, that the performance promised is reasonably certain.’ [Citation.] A proposal ‘cannot be accepted so as to form a contract unless the terms of the contract are reasonably certain. [¶] . . . The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy.’ ” [Citations.] If, by contrast, a supposed ‘contract’ does not provide a basis for determining what obligations the parties have agreed to, and hence does not make possible a determination of whether those agreed obligations have been breached, there is no contract.” (*Weddington, supra*, 60 Cal.App.4th at pp. 811-812.)

“The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.” (Civ. Code, § 1638.) “The fundamental goal of interpreting a contract . . . ‘is to give effect to the mutual intention of the parties. [Citation.] If contractual language is clear and explicit, it governs. [Citation.]’ [Citations.] The courts ‘look first to the language of the contract in order to ascertain its plain meaning or the meaning a layperson would ordinarily attach to it.’ ” (*Frank and Freedus v. Allstate Ins. Co.* (1996) 45 Cal.App.4th 461, 470-471.)

“ ‘[I]f there is ambiguity . . . it is resolved by interpreting the ambiguous provisions in the sense the promisor . . . believed the promisee understood them at the time of formation. [Citation.] If application of this rule does not eliminate the ambiguity, ambiguous language is construed against the party who caused the uncertainty to exist.’ ” (*Montrose Chemical Corp. v. Admiral Ins. Co.* (1995) 10 Cal.4th 645, 667; see Civ. Code, §§ 1649, 1654.)

The sixth provision of the settlement agreement provides: “Construction of Agreement: This agreement is the product of negotiation and preparation by and between each party hereto and their respective attorneys. Accordingly, both parties hereto acknowledge and agree that this agreement shall not be deemed prepared or drafted by one party or another, or the attorney for one party or another, and shall be construed accordingly.”

D. Analysis

Evidently, no party requested a statement of decision as to any of the trial court’s determinations at issue here. Thus, since no statement of decision was requested or issued, we must “imply all findings necessary to support the judgment.” (*Cahill, supra*, 194 Cal.App.4th at p. 956.)

In the first of the two orders from which Mitchell appeals, the trial court approved Smith’s second amended petition for settlement of first and final account and report. The court also granted Lowrey’s second petition for instructions, directing Lowrey to

distribute the real property based on the ownership interests described in that petition, consistent with the settlement agreement. Additionally, the court approved Lowrey's petition for settlement of second and final account and report of trustee for all actions and for all expenditures occurring prior to May 2, 2014, the date of the settlement agreement. Finally, the court denied in its entirety Mitchell's amended petition for instructions.

In those portions of the second of the two orders from which Mitchell appeals, the trial court approved Lowrey's petition for settlement of second and final account and report for all actions and expenditures after May 2, 2014.

We conclude that Mitchell's arguments before the trial court, and her arguments on appeal, are barred by the broad settlement agreement. Under the terms of the settlement agreement, "the entire litigation shall be deemed settled with respect to all parties to said action." Mitchell agreed to dismiss, with prejudice, her appeal from the November 20, 2013, judgment, and to comply with the terms of that judgment. Further, Mitchell agreed "to release and discharge [Smith] and her agents, servants, employees, heirs, assigns, representatives, predecessors, successors in interest, and attorneys *from any and all actions, claims, liens, and demands whatsoever, now existing or hereafter accruing, and/or damages to [Mitchell] and any and all other damages and consequences which, in any way, relate to, connect with, or arise out of the matters as set forth in [Mitchell]'s action* filed in San Joaquin County Superior Court case number 39-2011-00267528-PR-TR-STK and in the appeal filed by [Mitchell] bearing case number C075479, *and all related incidents, transactions, and events arising therefrom.*" (Italics added.) Mitchell also agreed "that this agreement and *release shall apply to all unknown and unanticipated claims* which arise from any matters set forth in the San Joaquin County action and the appeal . . . , and any and all related incidents, transactions, and events, also including all rights or derivative actions, as well as any claims known or disclosed" (Italics added.) Mitchell expressly waived the provisions of Civil Code

section 1542, the text of which is set forth *ante*. Mitchell further agreed to file no objections to the accounting filed by Smith as amended pursuant to the agreement.

Smith was a party to the settlement agreement, both individually and as trustee of the trust. The trial court ordered Smith replaced as trustee by Lowrey in its June 13, 2013, tentative decision, which determination it did not change in its July 26, 2013, statement of decision.⁷ The parties entered into the settlement agreement on May 2, 2014.

Based on the foregoing, by the settlement agreement, Mitchell released all claims against Smith, *known and unknown, then existing or subsequently accruing*, both individually and in her capacity as trustee, insofar as they related to, were connected with, or arose out of the matters as set forth in Mitchell's lawsuit. Contrary to Mitchell's contentions, all of her post-settlement claims advanced before the trial court and addressed here arise out of the underlying action that is the subject of the settlement agreement, and they are subject to the terms and conditions of that agreement. Therefore, all of Mitchell's claims asserted against Smith, individually and as trustee, are barred by the settlement agreement and the release set forth therein.

As for Lowrey, Mitchell asserts that, while she may have entered into the settlement agreement individually, she did not do so in her capacity as successor trustee. Any claims asserted against Lowrey in her individual capacity are clearly barred by the settlement agreement. We further conclude that claims asserted against Lowrey in her capacity as successor trustee are also barred, whether based on Lowrey herself being a party to the agreement or as successor in interest to Smith as trustee.

⁷ Smith did have some degree of continuing involvement in the administration of the trust after the court's order directing that she be replaced as trustee. However, this was consistent with the court's statement of decision filed July 26, 2013, in which it specified that Smith was to make an accounting, which was to be reviewed by Lowrey.

Under the agreement, Mitchell agreed to release and discharge all claims against Smith “and her agents, servants, employees, heirs, assigns, representatives, predecessors, *successors in interest*, and attorneys” (Italics added.) Paragraph 13 of the agreement, entitled “Successors and Assigns,” provided that the “terms and provisions of this agreement shall be binding on [Mitchell], [Smith], and Joan Maury, Patricia Calder, and Carolyn Lowrey, and their heirs, devisees, executors, representatives, beneficiaries, assigns, agents, attorneys, servants, trustees, and *successors in interest* of the parties hereto.” (Italics added.)

“ ‘Successor in interest’ is defined as: ‘One who follows another in ownership or control of property. In order to be a “successor in interest,” a party must continue to retain the *same rights* as original owner . . . and there must be *change in form only and not in substance*, . . . ’ ” (*Perez v. 222 Sutter St. Partners* (1990) 222 Cal.App.3d 938, 948, fn. 8.) A successor trustee qualifies as a successor in interest to the preceding trustee, as one following another in ownership or control of property, retaining the same rights as its predecessor, the change being one in form only. (Cf. *U.S. Bank National Assn. v. Yashouafar* (2014) 232 Cal.App.4th 639, 641, fn. 1 [“Plaintiff is fully identified as U.S. Bank National Association, as trustee, as successor in interest to Bank of America, National Association, as successor by merger to Lasalle Bank National Association, as trustee for the Registered Holders of 2006-CD3 Commercial Mortgage Pass-Through Certificates, acting by and through J.E. Robert Company, Inc., its special servicer”]; *Hughes v. First Nat. Bank* (1941) 47 Cal.App.2d 547, 548 [defendants are the original trustee and its successor in interest].)

Accordingly, we conclude that Lowrey, as successor trustee, was the successor in interest to Smith as trustee. As such, we reject Mitchell’s contention that her release was not effective as against Lowrey because “[t]rustee [Lowrey] was not a party to . . . the settlement agreement” (Cf. *Thomas v. Westlake* (2012) 204 Cal.App.4th 605, 613, fn. 5 [a successor trustee is bound by a valid arbitration agreement executed by a

predecessor]; *Basore v. Metropolitan Trust Co.* (1951) 105 Cal.App.2d 834, 837 [it is admitted that the present defendant trustee is the successor in interest of the trustees named as defendants in the prior action, namely the members of the last board of directors of the dissolved corporation].) Under the settlement agreement, Mitchell has released all relevant claims insofar as asserted against Lowrey as successor trustee, and successor in interest, to Smith as trustee.

Mitchell asserts in her reply brief that the settlement agreement does not bar her contentions concerning Smith's accountings because "there is no provision in the settlement agreement whereby [Smith]'s accounts and all her acts during her administration are approved." While this may be a true statement of fact, it is misleading. While there may be no provision in the settlement agreement expressly approving of Smith's accounts, Mitchell waived and released any right to challenge those accounts or make any claims against Smith in connection therewith.

Mitchell claims that there was no consideration for the settlement agreement. (See generally *Forgeron Inc. v. Hansen* (1957) 149 Cal.App.2d 352, 360 [an agreement to be enforceable must be supported by good and valuable consideration, and the consideration must be such as was bargained by the parties].) This is plainly false. Pursuant to the terms of the agreement, Mitchell released certain claims and rights in exchange for, among other things, a similar release by Smith. In addition, pursuant to the agreement, Mitchell was to receive Smith's share of the balance of the trust account whereas Mitchell previously was not entitled thereto. Additionally, under the settlement agreement, Mitchell was entitled to 76 percent of the proceeds from the sale of the real property, consisting of her 20 percent, Smith's 20 percent, and 12 percent each from Lowrey, Maury, and Calder's 20 percent shares. Prior to entering into the settlement agreement, the five beneficiaries each held a 20 percent interest in the real property. Thus, Mitchell's argument alleging a lack of valid consideration supporting the settlement agreement is completely meritless.

Citing *Bellows v. Bellows* (2011) 196 Cal.App.4th 505, 511, Mitchell also asserts that a trustee may not extract from a beneficiary an agreement to accept a compromise concerning a disputed issue as a condition of receiving a benefit to which the beneficiary is entitled. While this may be a true statement of law, it does not accurately describe the settlement agreement at issue here. Mitchell did not waive and release her claims in exchange for the distributions to which she was entitled under the trust. Rather, she did so in exchange, inter alia, for a greater share in the real property, including Smith's entire share, as well as Smith's agreement to waive and release claims.

Moreover, in light of her waiver and release in the settlement agreement, Mitchell cannot pursue her claim that the court had the duty to scrutinize, sua sponte, the accountings submitted to it. (See generally *Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 427-428.) Whether or not the court had such a duty, and honored it, Mitchell cannot raise any claims in relation thereto in this action against Smith and Lowrey in light of her release in the settlement agreement.

Accordingly, we conclude that all of Mitchell's claims are barred by the settlement agreement.⁸

⁸ Mitchell filed a motion requesting that this court take judicial notice of certain recorded deeds, court records, and other facts she claims could not reasonably be the subject of dispute. However, "[r]eviewing courts generally do not take judicial notice of evidence not presented to the trial court. Rather, normally 'when reviewing the correctness of a trial court's judgment, an appellate court will consider only matters which were part of the record at the time the judgment was entered.' " (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3, quoting *Reserve Insurance Co. v. Pisciotto* (1982) 30 Cal.3d 800, 813.) Moreover, in light of our determination, there is no need to take judicial notice of the matters proffered by Mitchell. Accordingly, we deny her motion for judicial notice.

III. Substantial Evidence Supports Trial Court's Determinations

In any event, even if we were to consider Mitchell's arguments on their merits, we would conclude that the trial court's determinations are supported by substantial evidence, and its orders did not constitute an abuse of discretion.

In the order filed November 17, 2014, the trial court, inter alia, approved in its entirety the second amended petition for settlement of first and final account and report filed by Smith; granted the second petition for instructions filed by Lowrey insofar as directing her to distribute the real property pursuant to the ownership interests as set forth in that petition; approved the petition for settlement of second and final account and report filed by Lowrey for all actions and expenditures prior to May 2, 2014; and denied in its entirety Mitchell's amended petition for instructions.

Smith's second amended petition stated that it conformed to the terms of the settlement agreement between the parties and contained numerous representations consistent with the settlement agreement. The account addressed, among other things, the real property and other property on hand, trust income, disbursements, and loans, all of which, pursuant to the settlement agreement, were to be deemed satisfied as of the date of decedent's death. The account is in balance and properly reconciled based on the figures contained in the schedules. We conclude that there was substantial evidence to support the trial court's finding that the second amended petition for settlement of first and final account and report of trustee should be approved.

Similarly, the trial court's decision to approve Lowrey's petition for settlement of second and final account and report of trustee for all actions and expenditures prior to May 2, 2014, is supported by substantial evidence. This petition, too, stated that it conformed to the terms of the settlement agreement between the parties, and contained representations consistent with the settlement agreement. The account addressed, among other things, the real property and other property on hand. The account is in balance and properly reconciled based on the figures contained in the schedules. There was

substantial evidence to support the trial court's finding that this petition also should be approved.

The court also granted Lowrey's second petition for instructions insofar as it directed her to distribute the real property to the beneficiaries as set forth in the petition. There is no dispute as to the parties' ownership interests in the real property, or that the petition sought to distribute the property in accordance with those interests. Mitchell's contention with regard to the distribution of the real property is essentially that "this conveyance damaged [her] because instead of one trustee managing the beneficiaries['] interest[s] to sell the property, the responsibility has now been dumped on [Mitchell] to attempt to coordinate with the other three beneficiaries" However, while Mitchell may not agree with the distribution, this does not render it an abuse of discretion or establish that the court's determination was not supported by substantial evidence. The court could have simply determined that this would be the best or only manner in which to viably dispose of the property. "When no statement of decision is requested and issued, we imply all findings necessary to support the judgment." (*Cahill, supra*, 194 Cal.App.4th at p. 956.) We conclude that the court's order to distribute the property was not an abuse of discretion, and was supported by substantial evidence.

In her amended petition for instructions, Mitchell largely sought relief in conflict or inconsistent with the court's other determinations. In light of the trial court's determinations on the petitions for settlement and Lowrey's petition for instructions, the trial court did not abuse its discretion in denying Mitchell's amended petition for instructions, and the court's decision was supported by substantial evidence.

Finally, in the order filed March 19, 2015, the trial court, *inter alia*, approved Lowrey's petition for settlement of second and final account and report for all actions and expenditures occurring after May 2, 2014. As with the actions and expenditures in this petition occurring prior to May 2, 2014, the trial court's determination as to the post-May 2, 2014, actions and expenditures is supported by substantial evidence. The petition

recites that it conformed to the terms of the settlement agreement between the parties, and contained representations consistent with the settlement agreement. The account addressed, among other things, the real property and other property on hand. The account is in balance and properly reconciled based on the figures contained in the schedules. Thus, there was substantial evidence to support the trial court's finding that this petition also should be approved.

In short, as to both orders appealed from, Mitchell has not satisfied her burden on appeal of demonstrating that the trial court's determination was not supported by substantial evidence or that the court otherwise abused its discretion. (See generally *Cahill, supra*, 194 Cal.App.4th at p. 957.)

In light of our determinations, we need not address Mitchell's contention that the trustees are jointly and severally liable, or her contention that she is entitled to an award of attorney's fees and costs.

DISPOSITION

The trial court's orders are affirmed. Defendants shall recover their costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

s/MURRAY, J.

We concur:

s/RAYE, P. J.

s/BUTZ, J.